YEO YOO TEIK

v.

JEMAAH PENGADILAN SEWA, PULAU PINANG & ANOR.

COURT OF APPEAL, KUALA LUMPUR
DATO' SITI NORMA YAAKOB JCA
DATO' V.C. GEORGE JCA
DATO' AHMAD FAIRUZ SHEIKH ABDUL HALIM J
[CIVIL APPEAL NO. P-01-19-95]
27 NOVEMBER 1995

CIVIL PROCEDURE: *Appeal - Filing of record of appeal - Delay of 4 weeks - Extension of time - Whether delay reasonably explained - Practice Direction 2/91 - Whether to be strictly adhered to.*

In this application for an extension of time to file the record of appeal, the affidavit in support attributed the 4 weeks delay and the failure to comply with Practice Direction No. 2/91 to the fact that a new clerk (at the solicitor's firm) had taken over the conduct of the relevant file. Before the Court of Appeal a question arose as to whether Practice Direction 2/91 ought to be strictly adhered to, and in any case case, whether the reason as alluded to in the affidavit constituted a reasonable or acceptable explanation for the delay.

Held:

Per Siti Norma Yaakob JCA (delivering the judgment of the Court):

[1] Practice Direction 2/91 has been especially framed to regulate the procedure governing the filing of appeal records. Although it does not have the force of law, nonetheless it must be strictly adhered to so that there is a systematic and consistent procedure governing the filing of appeal records in this Court.

[2] The granting or dismissal of an application for extension of time is very much a discretionary matter. In this case, however, the Court is unable to exercise the discretion in favour of the applicant as no reasonable explanation has been given for the 4 weeks delay. Counsel's omission to be vigilant can hardly be described as an acceptable explanation.

[3] The supporting affidavit makes no mention of the factual circumtances surrounding the cause of action leading to the order appealed against. It would of assistance to the Court if Counsel had at least alluded to some facts or law in the affidavit so as to show at least an arguable case. This has not been done, and the omission, coupled with the unexplained delay, had left the Court with no alternative but to dismiss the application.

[Application dismissed]

***[Bahasa Malaysia** Translation of Headnotes]*

***PROSEDUR SIVIL:** Rayuan - Pemfailan rekod rayuan - Kelewatan selama 4 minggu - Perlanjutan masa - Samada sebab kelewatan dijelaskan dengan wajarnya - Arahan Amalan 2/91 - Samada hendaklah dipatuhi dengan ketatnya.*

Dalam permohonan untuk perlanjutan masa bagi memfailkan rekod rayuan ini, afidavit sokongan menjelaskan bahawa kelewatan selama 4 minggu dan kegagalan untuk mematuhi Arahan Amalan No. 2/91, adalah disebabkan oleh fakta bahawa seorang kerani baru (difirma peguamcara tersebut) telah mengambil alih pengendalian fail yang relevan. Di hadapan Mahkamah Rayuan satu persoalan berbangkit samada Arahan Amalan 2/91 seharusnya dipatuhi dengan ketatnya, dan selain itu, samada alasan sepertimana yang dikemukakan di dalam afidavit tersebut merupakan penjelasan yang munasabah atau boleh diterima bagi kelewatan tersebut.

Diputuskan:

Oleh Siti Norma Yaakob HMR (menyampaikan penghakiman Mahkamah):

[1] Arahan Amalan 2/91 telah dirangkakan secara khusus bagi mengatur prosedur untuk mengawal pemfailan rekod rayuan. Walaupun ianya tidak mempunyai kuatkuasa undang-undang, namun begitu ianya haruslah dipatuhi dengan sesungguhnya supaya terdapat prosedur yang sistematik serta konsisten yang mengawal pemfailan rekod rayuan dalam Mahkamah ini.

[2] Pemberian atau penolakan sesuatu permohonan untuk perlanjutan masa adalah merupakan perkara budibicara. Dalam kes ini, walaubagaimanapun, Mahkamah tidak dapat melaksanakan budibicara tersebut bagi pemohon kerana penjelasan yang wajar telah tidak diberikan bagi kelewatan selama 4 minggu tersebut. Peninggalan oleh Peguam untuk berwaspada tidak boleh disifatkan sebagai suatu penjelasan yang boleh diterima.

[3] Afidavit sokongan tidak menyebutkan keadaaan-keadaan faktual yang mengelilingi kausa tindakan yang membawa kepada perintah yang dirayui. Ianya akan membantu Mahkamah jika Peguam telah sekurang-kurangnya membayangkan fakta-fakta atau undang-undang di dalam afidavit tersebut agar dapat menunjukkan sekurang-kurangnya suatu kes yang boleh dihujahkan. Ini telah tidak dilakukan, dan peninggalan tersebut, disertai dengan kelewatan yang tidak diterangkan, telah tidak memberikan apa-apa alternatif kepada Mahkamah melainkan menolak permohonan ini.

[Permohonan ditolak]

For the appellant - Tan Kah Hoo; M/s. Gan Teik Chee & Co., Penang.
For the respondent - See Liang Teik; M/s. Lim Huck Aik & Co., Penang.

JUDGMENT

Siti Norma Yaakob JCA:

In this application for an extension of time to file the record of appeal, the affidavit in support affirmed by the applicant's solicitor states that the applicant had failed to obtain such an extension from the Registrar of this Court as Practice Direction 2/91 had not been complied with. That Practice Direction provides that a request for such an extension must be made to the Registrar within a week of the filing of the notice of appeal.

The applicant filed his notice of appeal on 16 February 1995 and the request for extension should have been made on or before 23 February 1995. This was not done. The applicant's solicitors only made such a request on 16 March 1995 a month after the notice was filed. The only reason given for the delay is that a new clerk had taken over the conduct of the file on 16 March 1995 and it was then discovered that no request for extension had been made under Practice Direction 2/91. A written request was immediately faxed to the Registry the same day.

Practice Direction 2/91 has been especially framed to regulate the procedure governing the filing of appeal records. Although it does not have the force of law, nonetheless it must be strictly adhered to so that there is a systematic and consistent procedure governing the filing of appeal records in this Court.

The granting or dismissal of an application for extension of time is very much a discretionary matter but in this instance we were loathe to exercise our discretion in favour of the applicant particularly as no reasonable and acceptable explanation had been given for the 4 weeks delay. The omission on the part of a solicitor to be vigilant can hardly be described as an acceptable explantation.

We also took note of the fact that the affidavit in support makes no mention of the factual circumstances surrounding the cause of action leading to the order appealed against. It was only before us that Counsel attempted to remedy the deficiency of his affidavit by offering to state that the appeal arose out of a Rent Tribunal matter for which prohibition had not been granted. It would have assisted us if Counsel had at least alluded to some facts or law in his affidavit so as to show at least an arguable case. The failure to do so coupled with the delay of 4 weeks for which no acceptable explanation had been given, left us with no choice but to dismiss the application with costs.

Reported by W.A. Sharif